

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

NATHANIEL JAMES DAVIS, JR.,

Plaintiff,

No. C10-5185 RJB/KLS

SCOTT ALEX SPEER,

Defendant.

**ORDER DENYING PLAINTIFF'S
MOTION FOR LEAVE TO AMEND
COMPLAINT AND ADOPTING
REPORT AND RECOMMENDATION**

This matter comes before the Court on the Report and Recommendation of Magistrate Judge Karen L. Strombom (Dkt. 24) and Plaintiff's Motion For Leave to File an Amended Complaint (Dkt. 25). The Court has considered the Report and Recommendation, objections to the Report and Recommendation, the pleadings filed regarding the motion, and the remaining record.

THE REPORT AND RECOMMENDATION

The facts are related in the Report and Recommendation (Dkt. 24, at 1-3) and are adopted here by reference. The Report and Recommendation recommends dismissal of the Second Amended Complaint without leave to amend because amendment would be futile. Dkt. 24. Plaintiff objects to adoption of the Report and Recommendation by arguing that the Defendant's writing his name on a disciplinary form, without checking his driver's license, fingerprints, dental record, or birth certificate, constituted discriminatory conduct. Dkts. 26 and 27. Plaintiff also appears to be challenging his transfer from Olympic Corrections Center to Clallam Bay Corrections Center. *Id.*

The Report and Recommendation (Dkt. 24) should be adopted and Plaintiff's claims dismissed. Plaintiff's arguments regarding the Defendant's writing his name are without merit and fail to show why the Report and Recommendation should not be adopted. Further, Plaintiff's claims regarding his transfer fail to state a discriminatory claim or violation of a constitutional right. *Olim v. Wakinekona*, 461 U.S. 238 (1983)(an inmate does not have a right to be confined in any particular prison, or to be transferred to any particular prison).

MOTION TO AMEND

Fed. R. Civ. P. 15(a)(2) provides that “a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.” “Five factors are taken into account to assess the propriety of a motion for leave to amend: bad faith, undue delay, prejudice to the opposing party, futility of amendment, and whether the plaintiff has previously amended the complaint. Futility alone can justify the denial of a motion to amend.” *Johnson v. Buckley*, 356 F.3d 1067, 1077 (9th Cir. 2004)(*internal quotations and citations omitted*).

Plaintiff's Motion for Leave to Amend his Complaint (Dkt. 25) a third time should be denied because amendment is futile. Plaintiff again raises the issue of Defendant's having written his name while he was handcuffed. Defendant opposes the motion, arguing that he has failed to allege a claim "plausible of relief." Dkt. 28. "[F]or a complaint to survive a motion to dismiss the non-conclusory factual content, and reasonable inferences from that content must be plausibly suggestive of a claim entitling the pleader to relief." *Moss v. U.S. Secret Service*, 572 F.3d 962, 969 (9th Cir. 2009). Plaintiff has failed to allege facts that are "plausibly suggestive of a claim entitling the pleader to relief." *Id.* His motion should be denied.

1 Accordingly, it is hereby **ORDERED**:

- 2) The Court **ADOPTS** the Report and Recommendation (Dkt. 24).
- 3) Defendant Speer's motion to dismiss (Dkt. 20) is **GRANTED** and all claims
4 against him are **Dismissed With Prejudice**.
- 5 Plaintiff's Motion For Leave to File an Amended Complaint (Dkt. 25) is
6 **DENIED**.
- 7) The Clerk is directed to send copies of this Order to Plaintiff, counsel for
8 Defendant and to the Hon. Karen L. Strombom.

9 **DATED** this 7th day of December, 2010.

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12 ROBERT J. BRYAN
13 United States District Judge
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